

NEBRASKA ADMINISTRATIVE CODE

Title 129 – Nebraska Air Quality Regulations

Chapter 14 – PERMITS – PUBLIC PARTICIPATION

001 Scope. Except for modifications qualifying for administrative or minor permit revision procedures in Chapter 15, all Class I and Class II operating permit proceedings, including initial permit issuance, significant modifications, and renewals, and unless otherwise provided by rule, all construction permits, shall provide for public notice, an opportunity for comment, and a hearing, if requested, on the draft permit in accordance with the procedures of this Chapter. Sections 002 through 009 are to be followed for all permits except PSD permits. Section 010 is to be followed for PSD permits.

002 Notice shall be given by publication in a newspaper of general circulation in the area where the source is located and by mailing to EPA and persons on a mailing list developed by the Department, including those persons who request in writing to be on the mailing list; and by other means, if necessary, to assure adequate notice to the affected public.

003 The notice shall contain the following:

003.01 The identity of the affected facility;

003.02 The name and address of the permittee;

003.03 The name, address, and telephone number of the Department;

003.04 The activity or activities involved in the permit action;

003.05 The emissions change involved in any permit modification;

003.06 The name, address, and telephone number of the person from whom interested persons may obtain additional information;

003.07 The location where copies of the draft permit, the application, draft permit revision, and other materials deemed relevant by the Department to the permit decision, may be reviewed; and

003.08 A brief description of the comment procedures and the time and place of any hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled.

004 Persons or groups shall have 30 days from issuance of public notice to provide the Director with any written comments concerning the proposed permit action for which the public notice has been issued and/or request a public hearing in writing in accordance with 005 below. Such 30 day comment period may be extended by the Director.

005 Public Hearings.

005.01 The applicant, any affected State, any interstate agency, the Administrator, or any interested agency, person, or group, may request or petition the Director, in writing, within the 30 day comment period of the public notice, for a public hearing, and state the nature of the issues to be raised and all arguments and factual grounds supporting their position.

005.02 The Director may hold a public hearing if the comments, requests, or petitions raise legal, policy or discretionary questions of general application not pertaining solely to a particular party and significant public interest exists with respect to the application.

006 Public notice of hearing. In addition to the public notice described in 003 above, the public notice of a hearing under 005 shall be published at least 30 days prior to the hearing in accordance with 002 and shall contain the following information:

006.01 Reference to the date of the previous notices relating to the permit;

006.02 Date, time, and place of hearing;

006.03 A brief description of the nature and purpose of the hearing, including the applicable rules and procedures; and

006.04 A concise statement of the issues raised.

007 Adjudicative Hearing.

007.01 Any interested person may petition the Director for an adjudicative hearing in accordance with the Department's Title 115-Rules of Practice and Procedure.

007.02 Title 115 shall govern any adjudicative hearing requested under 007.01.

008 At the time that any final permit decision is issued, the Department shall issue a response to significant comments received during the comment period and public hearing. The response to comments shall be made available to the public.

009 The Department shall make and keep a record of the commenters and of the issues raised during the public participation process. This record shall be made available to the Administrator of EPA in fulfillment of his or her obligation under Section 505(b)(2) of the Act to determine whether a citizen petition may be granted. Such record shall also be available to the public.

010 Public participation in PSD permit applications. Within one year after receipt of a complete application, as described in section 023 of Chapter 19, the Department shall

010.01 Make available in at least one location in each region in which the proposed source would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

010.02 Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public hearing as well as written public comment.

010.03 Send a copy of the notice of public comment to the applicant, the Administrator and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: Any other state or local air pollution control agencies, the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency, and any State, Federal Land Manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

010.04 Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations.

010.05 Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The Department shall make all comments available for public inspection in the same locations where the Department made available preconstruction information relating to the proposed source or modification.

010.06 Make a final determination whether construction should be approved, approved with conditions, or disapproved.

010.07 Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Department made available preconstruction information and public comments relation to the source.

Enabling Legislation: Neb. Rev. Stat. §§81-1504(1)(2); 81-1505(12)

Legal Citation: Title 129, Ch. 14, Nebraska Department of Environmental Quality